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OFFICE OF PETITIONS

In re Application of :
Reichert et al. :
Application No. 09/973,557 : DECISION ON
Filed: October 10, 2001 : PETITION
Atty Docket No. 21101.0111U2 :

This is a decision on the PETITION UNDER 37 C.F.R. §1.181(a) TO WITHDRAW A HOLDING OF ABANDONMENT-NO FEE REQUIRED filed May 23, 2008.

The above-identified application became abandoned for failure to file a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) filed October 29, 2007. This Office action set a one-month period for reply, with extensions of time obtainable under §1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned on November 30, 2007. The instant petition precedes the mailing of a courtesy Notice of Abandonment. Applicants state that they became aware of the abandonment through a telephone call from the examiner.

In response, applicants filed the instant petition, asserting that the Notice of Non-Compliant Amendment was never received at the correspondence address of record. Applicants noted that a power of attorney was filed on September 24, 2007, and made of record prior to the mailing of the Notice. The practitioner states that he has reviewed the file jacket and docket records and provides a copy of the docket records where the due date for this Notice would have been entered had it been received.

A review of the application file reveals no irregularities in the mailing of the Notice of Non-Compliant Amendment mailed October 29, 2007. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption.

The following showing is required:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has adequately supported his claim of non-receipt with such evidence.

In view thereof, the holding of abandonment is hereby WITHDRAWN.

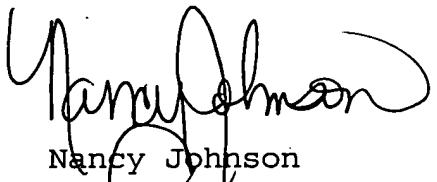
The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 1797 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the Notice of Non-Compliant

Amendment mailed October 29, 2007 and for restarting of the period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.



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Office of Petitions